

# **Building a Managed Assigned Counsel (MAC) System to Maximize Value and Quality**

Nancy T. Bennett, Esq., January 2020

## **Growing a Culture of Excellence**

### **Local Bar Leadership Support**

Respected local lawyers committed to equal justice should participate in leadership roles with the MAC to show that the local legal community supports high quality public defense. This leadership sets the tone for a local culture of excellence.

### **Published Performance Standards**

These articulate the mission, provide a roadmap for high quality representation and provide the measurement tool for implementing performance assessments and recertification.

### **Selective Certification Standards**

Selective objective certification standards assure competence when paired with the exercise of discretion in selection of panel attorneys by the MAC program. Selectivity makes acceptance indicative of quality, supporting a culture of excellence.

Example: MA serious felony certification requires 6 criminal jury trials tried to verdict as lead counsel within the preceding 5 years as a precondition for application. Murder case certification requires 10 criminal jury trials in the same timeframe, and substantial experience with expert witnesses. Applications are then judged by a blue-ribbon panel.

### **Mentoring**

A structured mentor system supports competence and cost-effectiveness through efficiency. Selection by the MAC to be a mentor is an honor. Mentors must have set minimum qualifications, training, payment, and individual assignments which are near universal. Working with a mentor should be the norm, not a stigma.

### **Training**

Certification training supports competence, provides entry opportunities and also aids the attorneys' professional development in private practice.

Example: MA lowest court certification requires 7-day training after selection.

CLE required and offered by the MAC at low cost supports both the mission of excellence in assigned cases and the private practices of the participating attorneys.

Moderated online practice support communities support the sense of being part of a mission and enable the rapid sharing of creative tactics, information about opponents and developments in the law.

Partnering with an institutional defender agency can deliver cost effective training to agency and MAC alike. Training and knowledge sharing has monetary value for private counsel.

### **Local Supervising Attorneys**

Respected local lawyers paid by the MAC program to assess performance, deliver training and investigate complaints implement MAC program policies while engaging the local bar in supporting quality standards. This is quality oversight that the MAC can make targeted and flexible.

### **Awards**

Awards ceremonies articulate the mission and grow the key idea that high quality indigent defense is something the whole legal community is proud to support.

### **Management Practices to Assure Public Expenditures Deliver Value and Quality**

#### **Independent Assignment Mechanism**

Judges must remain impartial referees, showing equal consideration to prosecution and defense, while avoiding exposure to facts not offered in evidence. This impartial role presents an ethical and legal bar to judges exercising effective oversight and management of the defense function. Though input from judges can and should be sought by the MAC, independent assignment and reassignment of counsel by the MAC protects attorneys' independence in managing cases, preserves client confidentiality and enables the MAC to drive cases to the most qualified and productive attorneys.

#### **Online Billing**

An online billing system provides prompt compensation to attorneys, and gathers cost and other data in an accessible format thus supporting both quality and fiscal oversight. Billing details show performance data to support the recertification process, like prompt client visits, trials, motion practice and dispositions. Online billing enables fiscal oversight with very modest agency resources since the data is accessible for auditing as patterns and anomalies are easily identified.

#### **Caseload Limits**

Caseload limits assure both fair distribution of fee generating public appointments among qualified attorneys, and assignment of cases to providers who have adequate time to do the work well. Reasonable caseload limits including an open case limit must be enforced to assure quality in any delivery system including staff, contract, MAC or ad hoc.

#### **Complaint Investigation**

Fair and prompt complaint investigation and resolution, with secure complaint data maintenance, reduces bar complaints against attorneys, and is crucial to enforcement of performance standards and to fairness in managing periodic recertification.

### **Performance Assessments with Case Review**

You get what you measure. Assessments of selected tasks, keyed to performance standards and conducted by respected local supervising attorneys, deliver coaching, improve practice and provide the data basis for a fair recertification process.

### **Periodic Recertification Based on Performance Data**

Requiring periodic recertification for eligibility, keyed to published and measured performance standards, for all participating attorneys, produces adherence to performance standards. Including productivity as a measured criterion for recertification promotes fair billing. Sharing objective performance data by the MAC program with the attorneys demonstrates fairness and promotes positive change.

Example: The MA requirement for recertification every 5 years, where the process shared performance and cost data with attorneys and allowed a 1-year period to correct deficiencies, in 4+ years demonstrably raised compliance with performance standards from 50% to 80% with the majority of the remaining 20% non-complying attorneys voluntarily withdrawing from the program. Billing remained flat over that period.

### **Hourly Rates**

Hourly rates, not flat rates, are the only payment mechanism that incentivizes vigorous defense litigation without the need for adjustments in individual cases. If flat rates or contracts are used, payments must be readily adjustable by the MAC based on individual case litigation.